IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1972

NO. ~~73-536~~

ROBERT SANCHEZ,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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TOPICAL INDEX

	Page
Table of Authorities	ii
PETITION FOR CERTIORARI	1
OPINIONS BELOW	2
JURISDICTION	2
QUESTIONS PRESENTED FOR REVIEW	3
CONSTITUTIONAL AND STATUTORY PROVISIONS	3
STATEMENT OF THE CASE	6
REASONS FOR GRANTING WRIT OF CERTIORARI	7
THE VALIDITY OF 19 U.S.C. §482 IN LIGHT OF THE FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION HAS NOT HERETOFORE BEEN DETERMINED BY THE UNITED STATES SUPREME COURT	7
CONCLUSION	10
APPENDIX A	
Order of Affirmance of Court Appeals for Ninth Circuit	

TABLE OF AUTHORITIES

Cases

	Page
Almeida-Sanchez v. United States (1973) ___ US ___, 71-6278, June 21, 1973	A-2
Terry v. Ohio (1968) 392 U.S. 1, 88 S.Ct. 1868	8

Constitution

United States Constitution:	
Fourth Amendment	3, 7

Statutes

18 U.S.C. §3231	2, 4, 6
19 U.S.C. §482	3, 4, 7, 9
21 U.S.C. §841(a)(1)	6
21 U.S.C. §952	6
21 U.S.C. §960	6
21 U.S.C. §963	6
28 U.S.C. §1245(1)	2, 4

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PETITION FOR CERTIORARI

Petitioner, ROBERT SANCHEZ, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in the above case on August 28, 1973.

OPINIONS BELOW

The opinion of the District Court for the Southern District of California is unreported.

The opinion of the Court of Appeals for the Ninth Circuit is Slip No. 73-1142.

JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit was made and entered on August 28, 1973, and copies thereof are appended to this petition in the Appendix A. The jurisdiction of the District Court was based on 18 U.S.C. §3231. The jurisdiction of this Court is invoked under 28 U.S.C. §1245(1):

> By writ of certiorari granted upon the petition of any part to any civil or criminal case, before or after rendition of judgment of decree.

QUESTIONS PRESENTED FOR REVIEW

1. Whether the detention and search of petitioner and his automobile, pursuant to 19 U.S.C. §482, was violative of the search and seizure provisions of the Fourth Amendment of the U. S. Constitution.

2. What limitations exist on the authority of Federal border agents in light of a traveller's known citizenship.

CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves the following constitutional and statutory provisions:

1. Amendment IV, of the Constitution of the United States, which provides as follows:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing

the place to be searched, and the persons or things to be seized."

2. Title 28, United States Code, Section 1245(1) provides:

"By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree."

3. Title 28, United States Code, Section 3231 provides:

"The district courts of the United States shall have original jurisdiction, exclusive of the court of the States, of all offenses against the laws of the United States."

4. Title 19, United States Code, Section 482, reads as follows:

"Any of the officers or persons authorized to board or search vessels may stop, search, and examine, as well without as within their respective districts, any vehicle, beast, or person, on which or whom he or they shall suspect

there is merchandise which is subject to duty, or shall have been introduced into the United States in any manner contrary to law, whether by the person in possession or charge, or by, in, or upon such vehicle or beast, or otherwise, and to search any trunk or envelope, wherever found, in which he may have a reasonable cause to suspect there was merchandise which was imported contrary to law; and if any such officer or other persons so authorized shall find any merchandise on or about any such vehicle, beast, or person, or in any such trunk or envelope, which he shall have reasonable cause to believe is subject to duty, or to have been unlawfully introduced into the United States, whether by the person in possession or charge, or by, in, or upon such vehicle, beast, or otherwise, he shall seize and secure the same for trial."

STATEMENT OF THE CASE

Petitioner drove a borrowed camper truck into the United States from Mexico at the Port of Entry of San Ysidro, California. Petitioner presented proper proof of U.S. Citizenship. Based on no more than a mere suspicion on the part of Federal Border Agents, a search was conducted revealing marijuana and heroin concealed in the camper truck. Petitioner was charged with violation of 21 U.S.C. §§ 841(a)(1), 952, 960 and 963. Jurisdiction of the District Court was conferred by 18 U.S.C. §3231.

Prior to trial, petitioner moved to dismiss the indictment and inter alia, to suppress the evidence on the ground that it had been illegally seized and accompanied by an illegal arrest. An evidentiary hearing by the trial court resulted in a denial of petitioner's motion.

After pleading not guilty and waiving a jury trial, the court found petitioner guilty of all counts alleged. Petitioner was sentenced to five years imprisonment; in addition he must also serve a special

term of parole for three years.

On December 6, 1972, his petition for rehearing was denied, and on February 20, 1973, the court granted respondent's motion to dismiss the appeal. On March 26, 1973, bail was revoked and on April 6, 1973, substitution of new counsel for petitioner was filed and granted.

REASONS FOR GRANTING WRIT OF CERTIORARI

THE VALIDITY OF 19 U.S.C. §482 IN LIGHT OF THE FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION HAS NOT HERETOFORE BEEN DETERMINED BY THE UNITED STATES SUPREME COURT

The Ninth Circuit Court of Appeal, in affirming the conviction of petitioner, has upheld the Government's right to search at this Country's border for contraband, as set forth in 19 U.S.C. §482. This statute is clearly violative of the Fourth Amendment of the United States Constitution, in that it authorizes an unreasonable detention and subsequent search based on no more than a mere suspicion by Federal agents.

Despite language within said statute which purports to require "reasonable cause to suspect", the authority therein stems from the Government's power to detain persons at its whim and fancy. Practically speaking, persons crossing this nation's borders are no less than under arrest while undergoing this unreasonable detention and questioning concerning their belongings. It is beyond the power of the Government to deny access to any United States citizen upon the presentation of proper identification. Once said citizenship is proven, what is the Government to do if faced with an uncooperative border-crosser?

The truth of the matter is that citizen returning to his homeland has no choice as to whether he will submit to such a whimsical and unreasonable detention. Consequently, the Government is free to scour the citizen's person and belongings in hope of detecting that "probable cause" necessary to strip the traveller's automobile. Does not then the search actually commence the instant the traveller is detained?

In the landmark case of Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, this Court deemed

it necessary to grant its writ of certiorari in order to determine the validity of police "stop and frisk" authority. In its decision, the Court upheld such a police power in order to protect the lives of this Nation's law enforcement officers. It is clear that the Government here seeks to similarly invoke a compelling reason for granting such a blanket authority to detain and search. Conceding a legitimate interest exists in seeking to exclude the importation of narcotics, petitioner submits that the harm therefrom carries not with it the immediacy which a concealed weapon does. The lives of Government Border Agents are not sought to be protected by 19 U.S.C. §482, and consequently, there is no similar compulsion, as in Terry v. Ohio, supra, to authorize that which is otherwise an unreasonable search and seizure in derogation of the Fourth Amendment of the United States Constitution.

In its present state, 19 U.S.C. §482 grants to Federal Border Agents a blanket authority to detain having as its parameters nothing more restrictive than the whim and caprice of said agents. Petitioner as

aforementioned argues that such a power to detain is a power to arrest without limitation. Notwithstanding the fact that the tenor of this petition expresses the unconstitutionality of said statute, petitioner asserts the need for and importance of clear and unarbitrary guidelines for searches and seizures undertaken at this Nation's borders. This Court is consequently called upon by this aggrieved petitioner to protect the countless thousands of citizen travellers from unreasonable intrusions upon their constitutional guarantees.

The question thus presented is a gravely important Federal issue, which heretofore has not been determined by this Court.

CONCLUSION

Petitioner therefore respectfully submits that a writ of certiorari should be granted in this case.

Respectfully submitted,

JULIUS A. DIX

Attorney for Petitioner

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, vs ROBERT SANCHEZ, Defendant-Appellants.	)	NO. 73-1142 ORDER OF AFFIRMATION

(August 28, 1973)

On Appeal from the U.S. District Court
For the Southern District of California

Before: CHAMBERS and HUFSTEDLER, Circuit Judges, and McNICHOLS, District Judge.*

Appellant drove a pick-up truck into the United States from Mexico at the Port of Entry at San Ysidro, California. A search was conducted revealing commercial quantities of marijuana and heroin concealed in the vehicle. This was clearly a border

*Honorable Ray McNichols, United States District Judge from the District of Idaho sitting by designation.

search. Appellant's reliance on the recent opinion of the United States Supreme Court in Alameida-Sanchez v. United States, ___ US ___, No. 71-6278, June 21, 1973, is misplaced. The conviction appealed from is ordered affirmed.

In affirming the conviction we do not pass on the question raised as to the purported conflict of interest of trial counsel and the alleged consequent denial of effective representation, as the record before us is devoid of any basis for such determination.

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In the Supreme Court of the United States

OCTOBER TERM, 1973

ROBERT SANCHEZ, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-536

ROBERT SANCHEZ, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

The sole issue presented is whether "border searches" pursuant to 19 U.S.C. 482 (Pet. 4-5) are constitutional under the Fourth Amendment.

After a jury-waived trial in the United States District Court for the Southern District of California, petitioner was convicted of importation and possession of marihuana and heroin with intent to distribute, in violation of 21 U.S.C. 841(a)(1), 952, 960 and 963. Petitioner was sentenced to five years' imprisonment and a three year special parole term. The court of appeals affirmed (Pet. App.).

Petitioner drove a pick-up truck and camper into the United States from Mexico at the San Ysidro, California, port of entry. Petitioner, his wife and his children were escorted into a secondary inspection area by a customs official. The customs official became suspicious because

an identical camper containing marihuana and heroin had been seized that day (Tr. 15-17). The customs official inspected the camper and discovered secret compartments under the bed area of the camper and in the water tank area (Tr. 21-22). The compartments were found to contain 159 kilos of marihuana and 3 and 3/4 ounces of heroin (Tr. 23-25).

Petitioner's contention that 19 U.S.C. 482, which authorizes "border searches" in connection with the entry of persons, vehicles or goods into the country, violates the Fourth Amendment is insubstantial. In *Carroll* v. *United States,* 267 U.S. 132, 155, this Court recognized the necessity and reasonableness of such searches, and they have since consistently been upheld as reasonable under the Fourth Amendment. *E.g., Alexander* v. *United States,* 362 F. 2d 379 (C.A. 9), certiorari denied, 385 U.S. 977; *Deck* v. *United States,* 395 F. 2d 89 (C.A. 9). The mere fact that a person crosses a border makes reasonable a search of his baggage, his vehicle and his personal effects. *United States* v. *Summerfield,* 421 F. 2d 684, 685 (C.A. 9).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

NOVEMBER 1973.

DOJ-1973-11